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Ex Parte Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CC Docket 95-116; WC Docket 07-149; WC 09-109

Dear Ms. Dortch:

I write on behalf of Neustar, Inc., in response to the letter of October 25, 2012, filed on behalf of Ericsson, Inc. (“*Ericsson Oct. 25 Ex Parte*”). Neustar appreciates the Commission’s careful consideration of the RFP Documents recommended by the Future of NPAC committee of the NAPM, LLC (“FoNPAC”) and the NANC. The process established by the Wireline Competition Bureau’s May 2011 Order and elaborated in the RFP Documents ensures competition while providing the Commission the full benefit of the expertise of the industry and the NANC in making a final determination with respect to the next Local Number Portability Administrator (“LNPA”). The RFP Documents have attracted support of the industry, state regulators, and consumers. All parties – including Ericsson – agree that the “LNPA procurement documents [should] be finalized and issued expeditiously.” *Ericsson Oct. 25 Ex Parte* at 6. Ericsson is just one of many potential bidders, and nothing in its latest *ex parte* raises any new concern or justifies delay – delay which would threaten the process by constraining the time available for industry evaluation and Commission action prior to the end of the current contracts.

1. With respect to the neutrality requirements in the RFP Documents, all parties now agree that there is no need to modify the process for evaluation of bidders’ neutrality. Ericsson appears to concede that Neustar’s proposed clarification – namely, that the FoNPAC should fully evaluate any response that includes an opinion of counsel that the bidder satisfies neutrality requirements – addresses any potential concerns about the extent of bidder participation. *See id.*

at 2. Ericsson has repeatedly represented that it is neutral.¹ It therefore can have no legitimate objection to the requirement that it provide a legal opinion to that effect and no reason to request that it be permitted to substitute, for that legal opinion, a promise that it will satisfy neutrality requirements at some future date. Ericsson likewise appears to concede that a “parallel” process for evaluating neutrality is unnecessary; Ericsson does not contest our showing that such a process – if it did not provide an opportunity for public participation and comment – would be unlawful.

Ericsson reiterates its complaint that the Code of Conduct in the RFP Documents is not “a rule of general applicability.” *Id.* But the only concern that Ericsson raises about the code of conduct is based on its misunderstanding of the provision related to employee stock ownership. The Code of Conduct states that “[n]o employee . . . will hold any interest, financial or otherwise, in any company” if that interest “would violate the neutrality requirements of the FCC or the Master Agreements.”² This Code of Conduct provision, by its own terms, makes it clear that it must be read in conjunction with the neutrality requirements of the Commission and of the Master Agreements. In the same section of the RFP, the FoNPAC sets out the minimum neutrality requirements that will be part of the Master Agreements. Those provisions make clear that, while an LNPA cannot own or be owned by a Telecommunications Carrier, “ownership interests . . . of five percent (5%) or less . . . shall not be considered ownership for this purpose.”³

In any event, the substance of the Code of Conduct and the other existing neutrality requirements are binding rules that apply until modified by the Commission. The Code of Conduct was originally put in place as part of the transaction that transferred ownership of Neustar from Lockheed Martin to Warburg Pincus. Neustar’s ownership, however, has since changed substantially: Neustar has been a public company since 2005 and no longer has a relationship or affiliation with Warburg Pincus. Nevertheless, even with this changed corporate

¹ Letter of John T. Nakahata, Counsel to Ericsson, Inc. to Marlene H. Dortch, Secretary, FCC, Docket Nos. 95-116, 07-149 & 09-109, at 2 (Oct. 1, 2012) (“Telcordia and Ericsson believe they are neutral . . .”); Comments of Telcordia Technologies, Inc., Docket Nos. 95-116, 07-149 & 09-109, at 4 (Sept. 13, 2012) (“Telcordia and Ericsson believe that both companies are neutral”); Letter of John T. Nakahata, Counsel to Ericsson, Inc. to Marlene H. Dortch, Secretary, FCC, Docket Nos. 95-116, 07-149 & 09-109, at 2 (Aug. 30, 2012) (“Telcordia is . . . neutral”).

² *Request for Proposal* § 4.2 (Evaluation of Code of Conduct).

³ *Request for Proposal* § 4.2(B)(1)(b) (emphasis added). The ownership threshold contained in the RFP is the same as is contained in the current Master Agreements. The Commission’s neutrality rules in 47 C.F.R. § 52.12(a)(1)(i), which apply to the NANPA and the PA, limit affiliation to ownership interests of ten percent or more. Contrary to Ericsson’s assertion, Neustar does not make “accommodation” for its employees’ stock ownership; it adheres to the Commission’s rules and to the Master Agreements.

structure, Neustar continues to adhere to the Code of Conduct, at significant cost. Ericsson has given no reason why it should be treated any differently or be subject to a different set of rules. At a minimum, because neutrality rules have broad implications for a vendor's proposal, the Commission cannot lawfully modify these requirements without giving all vendors the opportunity to make or revise their proposals in light of any such modified requirements.

2. Ericsson's renewed insistence that the Commission should impose a requirement for regional bids (*see id.* at 3) would represent a departure from the Commission's settled approach to this issue and would threaten to undermine, not promote, competitive bidding. The Commission has always recognized that the NANC "should determine, in the first instance, whether one or multiple administrators should be selected." First Report and Order, *Telephone Number Portability*, 11 FCC Rcd 8352, 8402, ¶ 95 (1996). The Commission also approved the selection of a single LNPA when Perot Systems proved unable to perform. *See* Third Report and Order, *Telephone Number Portability*, 13 FCC Rcd 11701, 11709-10 (1998). The Commission expressly authorized the selection of "one or more" vendors in the May 2011 Bureau Order.⁴ The technological and regulatory landscape has changed considerably for the Commission, the industry, and consumers since 1996 and the industry's experience with LNP over the last 15 years should be taken into account in any judgment about the most efficient configuration for NPAC service.

Neustar has already explained why mandating regional bids is unwarranted.⁵ Economic analysis demonstrates that NPAC service is provided most efficiently by a single vendor. Establishment of multiple regional NPAC providers would not only raise the costs of providing the service; it would also raise industry's costs of creating and maintaining interfaces with multiple providers. As Professor Scott Masten of the University of Michigan Ross School of Business concludes in his paper on this topic:

My analysis indicates that significant cost advantages exist to using a single vendor for the provision of NPAC services, and that these advantages are likely to

⁴ *See* Order, *Petition of Telcordia Technologies Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC's Interim Role in Number Portability Administration Contract*, 26 FCC Rcd 6839, ¶ 2 (2011).

⁵ *See* Letter of Aaron M. Panner to Marlene H. Dortch, Secretary, Docket Nos. 95-116, 07-149 & 09-109, at 5-6 (Sept. 11, 2012); Letter of Aaron M. Panner to Marlene H. Dortch, Secretary, Docket Nos. 95-116, 07-149 & 09-109, at 5-6 (Nov. 22, 2011) (submitting Scott E. Masten, *Scale and Transactional Economies in NPAC Services and the Design of Competitive Bidding Procedures* ("Masten Paper")). The claim that it would be somehow more difficult for the industry to shift all of its NPAC service to a new vendor, rather than "a third, half or even two thirds," *id.* at 4, is unsupported and counter-intuitive. Developing and maintaining interfaces to multiple vendors could well be more difficult than a one-time shift to a new vendor.

outweigh any potential benefit that might arise from requiring that different vendors serve separate regions of the U.S. In particular, I conclude that the benefits that Professor Rogerson attributes to procurement from multiple vendors are either nonexistent or highly speculative and, consequently, would be unlikely to justify sacrificing the substantial economies that accrue to use of a single vendor.⁶

Indeed, Ericsson's continued request for regulatory intervention to tilt the bidding process in favor of regional bids reflects its apparent recognition that regional bids are *not* likely to be competitive – otherwise, the bidding process itself would reveal the superiority of such bids.⁷

Moreover, mandating that each bidder submit regional bids would undermine the competitiveness of the bidding process.⁸ The industry and the Commission will be best able to compare the competitiveness of various proposals if each bidder submits its most competitive bid or bids. If a bidder believes that a regional approach to NPAC administration is not effective, forcing the bidder to develop such a bid will not provide the industry or the Commission with any additional useful information; it will simply force the submission of unattractive bids. Such bids risk obscuring the technical and operational merits of bidders' preferred proposals and thereby making bids less, not more, informative.

Ericsson's claim that only an incumbent would prefer to submit a package bid has no support – indeed, the record is to the contrary: the technical and operational challenges associated with having multiple NPACs provide ample reason for any bidder to decline to assume the implementation risk associated with a multi-vendor approach.⁹ At the same time, to the extent *any* bidder believes that a regional approach will provide the industry with the best solution – all things considered – it has the opportunity to submit that bid. The industry, which relies on the NPAC for fulfillment of number porting obligations and critical network management functions, is the best judge of whether, under current industry conditions, employing one or more NPAC vendors is the best solution, and the ability to compare each bidder's most competitive bid will give the industry all of the information it needs to make that

⁶ *Masten Paper* at 1.

⁷ The analysis by Professor William Rogerson that Ericsson earlier submitted in this docket acknowledges this point. He recognized that by permitting bidders to submit package or regional bids, the “procurement agency is able to actually see what the differential cost is between procuring the best possible single provider system and the best possible multiple provider system based on firms' actual bids.” William P. Rogerson, *An Economic Analysis of Competitive Procurement Design Options for NPAC Services*, at 21 (Sept. 13, 2011). (Professor Rogerson's paper was submitted in this docket on Sept. 15, 2011).

⁸ See *Masten Paper* at 24-29.

⁹ See *id.* at 26 n.19.

judgment.¹⁰ If the FoNPAC is not satisfied with the form or substance of any potentially competitive bid, it has the ability to seek improved proposals through the best-and-final-offer process, including by requesting regional bids.¹¹ None of this requires further action by the Commission.

Ericsson suggests that it will “provide additional details” about how regional bids might work (*see id.* at 4), but Ericsson has been proposing various regional approaches to the industry for years. It should not be permitted to use this to justify further delay in the process. The proper way for Ericsson to elaborate on any regional proposal is by submitting its proposal to the FoNPAC for evaluation. Any such regional proposal would also be available to inform the industry’s evaluation of other bidders’ proposals. There is no reason for the Commission to consider any such proposal in advance.

3. The Commission has made clear that it will have the final say in selection of the next NPAC vendor or vendors, and Neustar fully expects that the FoNPAC and the NANC will ensure that the Commission has sufficient information to make a reasoned judgment concerning the NANC’s eventual recommendation.

That should not obscure the fact that the Commission has established a different regulatory framework to govern the LNPA contract than the NANPA and PA contracts. In the latter two cases, the Commission chose a government-contracting model and conducted federal procurements under the FAR. By contrast, the Commission has delegated the task of recommending the NPAC vendor to the NANC and the NAPM, LLC, with Commission oversight; the NAPM, LLC, not the government, is the purchaser under the current NPAC contracts.¹² That makes sense: while administration of the North American Numbering Plan and number pooling are government functions, the Communications Act places *on local exchange carriers* the obligation to “provide . . . number portability in accordance with requirements prescribed by the Commission.” 47 U.S.C. § 251(b)(2). Moreover, the model that the Commission adopted – in which the industry contracts with the LNPA directly – has been extremely effective, and there is no reason for the Commission to abandon that approach. To the extent Ericsson suggests that there is no difference between federal procurement and the industry-procurement model that the Commission has adopted for the NPAC, it is incorrect for the reasons that we have laid out in our prior *ex parte* communications.

¹⁰ The government generally awards contracts to a single bidder; such single awards account for the vast majority of government contracts. The Commission itself, for example, has used a single vendor for the NANPA and the PA (both of which have been put out for competitive bid) and USF administration.

¹¹ As Neustar has explained previously, in a confidential RFP process, there is no reason to mandate the solicitation of multiple best-and-final offers.

¹² Ericsson’s claim that the government is the “buyer” under the LNPA contract, *see Ericsson Oct. 25 Ex Parte* at 4, is incorrect.

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If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,



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